IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 577 of 2001

in

SPECIAL CIVIL APPLICATION No 5957 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SATISHKUMAR P MADALANI

Versus

TALUKA PANCHAYAT

Appearance:

1. LETTERS PATENT APPEAL No. 577 of 2001

MR JT TRIVEDI for Appellant No.

MR HIMANSHU TRIVEDI for Appellant No.

MR PV HATHI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE R.S.GARG

and

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 08/04/2005

ORAL JUDGEMENT (Per : HON'BLE MR.JUSTICE R.S.GARG)

ADMIT. Notice was issued to the other side for final disposal of the matter at the motion hearing stage. The respondent establishment is properly represented. The matter is admitted for hearing.

2. Shri Trivedi, learned counsel for the appellant submits that the judgement delivered by the learned Single Judge suffers from material irregularity and perversity when a finding in para 9 is recorded that the workman had already filed reply in which it had already been stated that he (employee) was an employee under the relief operation work and he was gainfully employed somewhere else. It is submitted on behalf of the appellant that no reply was filed to the Special Civil Application nor any affidavit was filed by the present appellant. So far as his claim petition, details of claim before the Labour Court are concerned the appellant did not make any admission that he was employed under relief operation work. His further submission is that there is nothing on record of the Labour Court or before the learned Single Judge on which a finding could be recorded that the workman had filed reply in which it was already stated that the workman was employed under relief operation work. He submits that the findings recorded in para 9 of the judgement impugned are not in accordance with the records, therefore, the same deserve to be set aside and the Special Civil Application by the other side deserves to be dismissed.

3. Mr.Hathi, learned counsel for the respondent on the other hand submits that the findings recorded in para 9 are to be seen in their proper context. According to him the appellant was appointed in relief operation work, but for the reasons best known to him he did not bring on record the orders of appointment. His submission is that the present respondent/ original writ petitioner had brought on record number of documents and after going through the records and the documents the learned Single Judge recorded a finding that the employee was appointed in relief operation work. His further submission is that the findings recorded in para 9 are not to be read de hors the other paras of the judgement but the findings are to be read as a result of the discussion as contained in the earlier paras of the judgement.

4. On being asked that whether the present appellant has ever made any admission either in the Labour Court or before the learned Single Judge that he was employed under relief operation work, Mr.Hathi, learned counsel for the respondent very fairly submitted that it was not so. He further submitted that even if that particular finding recorded by the learned Judge is ignored from consideration then too the result would be the same.

5. In para 9 the learned Single Judge has observed as under:

> "9. In my view, looking to the facts and circumstances of the case, particularly, when the respondent workman has already filed reply in which it has already been stated that he was employed under relief operation work and he was gainfully employed somewhere else. These two contentions were enough for the Labour Court to decide the matter on merits of the case. However, the Labour Court has not considered these two aspects in this behalf. Moreover, when the matter is covered by Full Bench judgement of this Court, when it has been held that the Industrial Disputes Act is not applicable, there is no useful purpose will be served by remanding the matter to the Labour Court in this behalf. There is no question of leading any further evidence before the Labour Court and, therefore, I am not remanding the matter because the main contention raised by the petitioner that the respondent workman was employed on a temporary and on ad hoc basis and on account of scarcity and in that connection the Government act as a sovereign function and that cannot be said to be an industry which has been decided by the Full Bench of this Court."

6. From the above referred findings recorded by the learned Single Judge in para 9 of the judgement it would clearly appear that the learned Judge was of the opinion that two admissions were made by the workman. First is that he was appointed in relief operation work and the second that he was gainfully employed somewhere else. If the first fact appears to be wrong and there is no admission, then the simple gainful employment would not lead to dismissal of the reference because that would be material fact for award of back wages.

7. The learned Judge also observed that these two

aspects have not been taken into consideration by the learned Labour Court and no useful purpose would be served by remanding the matter to the Labour Court because the facts are available on the record.

8. The learned Judge has applied the dictum of the Full Bench in view of the finding recorded by him that the workman had made an admission that he was employed under the relief operation. If the findings regarding admission made by the workman are held to be perverse and no findings in the eye of law then we do not know what could have been the approach of the learned Single Judge. He might have remitted the matter to the learned trial court or he could have proceeded further in the matter on the basis of the evidence brought before him. But one thing is certain that was required to consider the whole case for recording a finding that the appellant was employed in the relief operation or not.

9. The submission of Mr.Hathi that the order passed by the learned Single Judge can still be maintained on strength of the other evidence available on record need not detain us unnecessarily because in a Letters Patent Appeal we would not be justified in marshalling or scrutinising the evidence for the first time especially when the learned Single Judge has not appreciated the evidence for passing an order against the interest of the appellant.

10. The appeal is allowed. The judgement passed by the learned Single Judge deserves to and is accordingly set aside. The matter is remanded to the learned Single Judge for consideration in accordance with law. There shall be no order as to costs. The parties shall be free to make a request to the learned Single Judge for early disposal of the matter.

(R.S. Garg, J.)

(Ravi R. Tripathi, J.)

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